

AMENDED IN ASSEMBLY SEPTEMBER 4, 2015

CALIFORNIA LEGISLATURE—2015–16 SECOND EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 8

**Introduced by Assembly Member Wood
(Coauthors: Assembly Members Bloom, Chiu, Levine, McCarty,
and Rendon)**

July 16, 2015

An act to amend Sections 17537.3, 22951, 22952, 22956, 22958, and 22963 of, and to add Section 22964 to, the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

AB 8, as amended, Wood. Tobacco products: minimum legal age.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, establishes various requirements for distributors and retailers relating to tobacco sales to minors. Existing law prohibits the furnishing of tobacco products to, and the purchase of tobacco products by, a person under 18 years of age. Under existing law, a person is prohibited from making various promotional or advertising offers of smokeless tobacco products without taking actions to ensure that the product is not available to persons under 18 years of age. Existing law also requires the State Department of Public Health to conduct random, onsite sting inspections of tobacco product retailers with the assistance of persons under 18 years of age.

This bill would extend the applicability of those provisions to persons under 21 years of age. The bill would authorize the State Department of Public Health to conduct random, onsite sting inspections of tobacco product retailers with the assistance of persons under 21 years of age.

The bill would also provide that the STAKE Act does not invalidate existing local government ordinances or prohibit the adoption of local government ordinances requiring a more restrictive legal age to purchase or possess tobacco products.

Existing law makes it a crime, punishable by a fine of \$75 or 30 hours of community service work, for a person under 18 years of age to purchase, receive, or possess certain tobacco products. Existing law requires 25% of certain fines to be paid to the city or county for the administration and cost of that community service work component. Existing law immunizes a person under 18 years of age from prosecution for those actions when they were taken while participating in specified enforcement activities.

This bill would delete those provisions.

By expanding the scope of existing crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17537.3 of the Business and Professions
- 2 Code is amended to read:
- 3 17537.3. The following acts are prohibited:
- 4 (a) For any person to offer as part of an advertising plan or
- 5 program, promotional offers of smokeless tobacco products which
- 6 require proof of purchase of a smokeless tobacco product unless
- 7 it carries a designation that the offer is not available to persons
- 8 under 21 years of age. Each promotional offer shall include in any
- 9 mail-in coupon a statement requesting purchasers to verify that
- 10 the purchaser is 21 years of age or older.
- 11 (b) For any person to honor mail-in and telephone requests for
- 12 promotional offers of smokeless tobacco products unless
- 13 appropriate efforts are made to ascertain that a purchaser is over
- 14 21 years of age. For purposes of this subdivision, appropriate

1 efforts to ascertain the age of a purchaser includes, but is not
2 limited to, requests for a purchaser's birth date.

3 (c) For any person by any means, as part of an advertising plan
4 or program, to distribute free samples of smokeless tobacco
5 products within a two block radius of any premises or facilities
6 whose primary purpose is directed toward persons under 21 years
7 of age including, but not limited to, schools, clubhouses, and youth
8 centers, when those premises are being used for their primary
9 purposes.

10 (d) For any person to distribute, as part of any advertising plan
11 or program, unsolicited samples of smokeless tobacco products
12 through a mail campaign.

13 SEC. 2. Section 22951 of the Business and Professions Code
14 is amended to read:

15 22951. The Legislature finds and declares that reducing and
16 eventually eliminating the illegal purchase and consumption of
17 tobacco products by any person under 21 years of age is critical
18 to ensuring the long-term health of our state's citizens.
19 Accordingly, California must fully comply with federal regulations,
20 particularly the "Synar Amendment," that restrict tobacco sales to
21 minors and require states to vigorously enforce their laws
22 prohibiting the sale and distribution of tobacco products to persons
23 under 18 years of age. Full compliance and vigorous enforcement
24 of the "Synar Amendment" requires the collaboration of multiple
25 state and local agencies that license, inspect, or otherwise conduct
26 business with retailers, distributors, or wholesalers that sell tobacco.

27 SEC. 3. Section 22952 of the Business and Professions Code
28 is amended to read:

29 22952. The State Department of Public Health shall do all of
30 the following:

31 (a) Establish and develop a program to reduce the availability
32 of tobacco products to persons under 21 years of age through the
33 enforcement activities authorized by this division.

34 (b) Establish requirements that retailers of tobacco products
35 post conspicuously, at each point of purchase, a notice stating that
36 selling tobacco products to anyone under 21 years of age is illegal
37 and subject to penalties. The notice shall also state that the law
38 requires that all persons selling tobacco products check the
39 identification of a purchaser of tobacco products who reasonably
40 appears to be under 21 years of age. The warning signs shall

1 include a toll-free telephone number to the department for persons
2 to report unlawful sales of tobacco products to any person under
3 21 years of age.

4 (c) Provide that primary responsibility for enforcement of this
5 division shall be with the department. In carrying out its
6 enforcement responsibilities, the department shall conduct random,
7 onsite sting inspections at retail sites and shall enlist the assistance
8 of persons that are under 21 years of age in conducting these
9 enforcement activities. The department may conduct onsite sting
10 inspections in response to public complaints or at retail sites where
11 violations have previously occurred, and investigate illegal sales
12 of tobacco products to any person under 21 years of age by
13 telephone, mail, or the Internet. ~~Participation in these enforcement~~
14 ~~activities by a person under 21 years of age does not constitute a~~
15 ~~violation of subdivision (b) of Section 308 of the Penal Code for~~
16 ~~the person under 21 years of age, and the A person under 21 years~~
17 ~~of age who participates in these enforcement activities is immune~~
18 ~~from prosecution thereunder, or under any other provision of law~~
19 prohibiting the purchase of these products by a person under 21
20 years of age.

21 (d) In accordance with Chapter 3.5 (commencing with Section
22 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
23 the department shall adopt and publish guidelines for the use of
24 persons under 21 years of age in inspections conducted pursuant
25 to subdivision (c) that shall include, but not be limited to, all of
26 the following:

27 (1) An enforcing agency may use persons under 21 years of age
28 in random inspections to determine if sales of cigarettes or other
29 tobacco products are being made to persons under 21 years of age.

30 (2) A photograph or video recording of the person under 21
31 years of age shall be taken prior to each inspection or shift of
32 inspections and retained by the enforcing agency for purposes of
33 verifying appearances.

34 (3) An enforcing agency may use video recording equipment
35 when conducting the inspections to record and document illegal
36 sales or attempted sales.

37 (4) The person under 21 years of age, if questioned about his
38 or her age, need not state his or her actual age but shall present a
39 true and correct identification if verbally asked to present it. Any
40 failure on the part of the person under 21 years of age to provide

1 true and correct identification, if verbally asked for it, shall be a
2 defense to an action pursuant to this section.

3 (5) The person under 21 years of age shall be under the
4 supervision of a regularly employed peace officer during the
5 inspection.

6 (6) All persons under 21 years of age used in this manner by an
7 enforcing agency shall display the appearance of a person under
8 21 years of age. It shall be a defense to an action under this division
9 that the person's appearance was not that which could be generally
10 expected of a person under 21 years of age, under the actual
11 circumstances presented to the seller of the cigarettes or other
12 tobacco products at the time of the alleged offense.

13 (7) Following the completion of the sale, the peace officer
14 accompanying the person under 21 years of age shall reenter the
15 retail establishment and shall inform the seller of the random
16 inspection. Following an attempted sale, the enforcing agency shall
17 notify the retail establishment of the inspection.

18 (8) Failure to comply with the procedures set forth in this
19 subdivision shall be a defense to an action brought pursuant to this
20 section.

21 (e) Be responsible for ensuring and reporting the state's
22 compliance with Section 1926 of Title XIX of the federal Public
23 Health Service Act (42 U.S.C. Sec. 300x-26) and any implementing
24 regulations adopted in relation thereto by the United States
25 Department of Health and Human Services. A copy of this report
26 shall be made available to the Governor and the Legislature.

27 (f) Provide that any civil penalties imposed pursuant to Section
28 22958 shall be enforced against the owner or owners of the retail
29 business and not the employees of the business.

30 SEC. 4. Section 22956 of the Business and Professions Code
31 is amended to read:

32 22956. All persons engaging in the retail sale of tobacco
33 products shall check the identification of tobacco purchasers, to
34 establish the age of the purchaser, if the purchaser reasonably
35 appears to be under 21 years of age.

36 SEC. 5. Section 22958 of the Business and Professions Code
37 is amended to read:

38 22958. (a) An enforcing agency may assess civil penalties
39 against any person, firm, or corporation that sells, gives, or in any
40 way furnishes to another person who is under 21 years of age, any

1 tobacco, cigarette, cigarette papers, any other instrument or
2 paraphernalia that is designed for the smoking or ingestion of
3 tobacco, products prepared from tobacco, or any controlled
4 substance, according to the following schedule: (1) a civil penalty
5 of from four hundred dollars (\$400) to six hundred dollars (\$600)
6 for the first violation, (2) a civil penalty of from nine hundred
7 dollars (\$900) to one thousand dollars (\$1,000) for the second
8 violation within a five-year period, (3) a civil penalty of from one
9 thousand two hundred dollars (\$1,200) to one thousand eight
10 hundred dollars (\$1,800) for a third violation within a five-year
11 period, (4) a civil penalty of from three thousand dollars (\$3,000)
12 to four thousand dollars (\$4,000) for a fourth violation within a
13 five-year period, or (5) a civil penalty of from five thousand dollars
14 (\$5,000) to six thousand dollars (\$6,000) for a fifth violation within
15 a five-year period.

16 (b) (1) In addition to the civil penalties described in subdivision
17 (a), upon the assessment of a civil penalty for the third, fourth, or
18 fifth violation, the department, within 60 days of the date of service
19 of the final administrative adjudication on the parties or payment
20 of the civil penalty for an uncontested violation, shall notify the
21 State Board of Equalization of the violation. The State Board of
22 Equalization shall then assess a civil penalty of two hundred fifty
23 dollars (\$250) and suspend or revoke a license issued pursuant to
24 Chapter 2 (commencing with Section 22972) of Division 8.6 in
25 accordance with the following schedule:

26 (A) A 45-day suspension of the license for a third violation at
27 the same location within a five-year period.

28 (B) A 90-day suspension of the license for a fourth violation at
29 the same location within a five-year period.

30 (C) Revocation of the license for a fifth violation at the same
31 location within a five-year period.

32 (2) The provisions of Chapter 4 (commencing with Section
33 55121) of Part 30 of Division 2 of the Revenue and Taxation Code
34 apply with respect to the collection of the penalty imposed by the
35 State Board of Equalization pursuant to paragraph (1).

36 (c) (1) For each suspension or revocation pursuant to
37 subdivision (b), the civil penalty of two hundred fifty dollars (\$250)
38 assessed pursuant to that subdivision, notwithstanding Section
39 22953, shall be deposited into the Cigarette and Tobacco Products
40 Compliance Fund established pursuant to Section 22990. Moneys

1 from that civil penalty deposited into this fund shall be made
2 available to the State Board of Equalization, upon appropriation
3 by the Legislature, for the purposes of meeting its duties under
4 subdivision (b).

5 (2) The department shall, upon request, provide to the State
6 Board of Equalization information concerning any person, firm,
7 or corporation that has been assessed a civil penalty for violation
8 of the STAKE Act pursuant to this section when the department
9 has notified the State Board of Equalization of the violation.

10 (d) The enforcing agency shall assess penalties pursuant to the
11 schedule set forth in subdivision (a) against a person, firm, or
12 corporation that sells, offers for sale, or distributes tobacco products
13 from a cigarette or tobacco products vending machine, or a person,
14 firm, or corporation that leases, furnishes, or services these
15 machines in violation of Section 22960.

16 (e) An enforcing agency may assess civil penalties against a
17 person, firm, or corporation that sells or deals in tobacco or any
18 preparation thereof, and fails to post conspicuously and keep posted
19 in the place of business at each point of purchase the notice
20 required pursuant to subdivision (b) of Section 22952. The civil
21 penalty shall be in the amount of two hundred dollars (\$200) for
22 the first offense and five hundred dollars (\$500) for each additional
23 violation.

24 (f) An enforcing agency shall assess penalties in accordance
25 with the schedule set forth in subdivision (a) against a person, firm,
26 or corporation that advertises or causes to be advertised a tobacco
27 product on an outdoor billboard in violation of Section 22961.

28 (g) If a civil penalty has been assessed pursuant to this section
29 against a person, firm, or corporation for a single, specific violation
30 of this division, the person, firm, or corporation shall not be
31 prosecuted under Section 308 of the Penal Code for a violation
32 based on the same facts or specific incident for which the civil
33 penalty was assessed. If a person, firm, or corporation has been
34 prosecuted for a single, specific violation of Section 308 of the
35 Penal Code, the person, firm, or corporation shall not be assessed
36 a civil penalty under this section based on the same facts or specific
37 incident upon which the prosecution under Section 308 of the Penal
38 Code was based.

39 (h) (1) In the case of a corporation or business with more than
40 one retail location, to determine the number of accumulated

1 violations for purposes of the penalty schedule set forth in
2 subdivision (a), violations of this division by one retail location
3 shall not be accumulated against other retail locations of that same
4 corporation or business.

5 (2) In the case of a retail location that operates pursuant to a
6 franchise as defined in Section 20001, violations of this division
7 accumulated and assessed against a prior owner of a single
8 franchise location shall not be accumulated against a new owner
9 of the same single franchise location for purposes of the penalty
10 schedule set forth in subdivision (a).

11 (i) Proceedings under this section shall be conducted pursuant
12 to Section 131071 of the Health and Safety Code, except in cases
13 where a civil penalty is assessed by an enforcing agency other than
14 the department, in which case proceedings shall be conducted
15 pursuant to the procedures of that agency that are consistent with
16 Section 131071 of the Health and Safety Code.

17 SEC. 6. Section 22963 of the Business and Professions Code
18 is amended to read:

19 22963. (a) The sale, distribution, or nonsale distribution of
20 tobacco products directly or indirectly to any person under 21 years
21 of age through the United States Postal Service or through any
22 other public or private postal or package delivery service at
23 locations, including, but not limited to, public mailboxes and
24 mailbox stores, is prohibited.

25 (b) Any person selling or distributing, or engaging in the nonsale
26 distribution of, tobacco products directly to a consumer in the state
27 through the United States Postal Service or by any other public or
28 private postal or package delivery service, including orders placed
29 by mail, telephone, facsimile transmission, or the Internet, shall
30 comply with the following provisions:

31 (1) (A) Before enrolling a person as a customer, or distributing
32 or selling, or engaging in the nonsale distribution of, the tobacco
33 product through any of these means, the distributor or seller shall
34 verify that the purchaser or recipient of the product is 21 years of
35 age or older. The distributor or seller shall attempt to match the
36 name, address, and date of birth provided by the customer to
37 information contained in records in a database of individuals whose
38 age has been verified to be 21 years or older by reference to an
39 appropriate database of government records kept by the distributor,
40 a direct marketing firm, or any other entity. In the case of a sale,

1 the distributor or seller shall also verify that the billing address on
2 the check or credit card offered for payment by the purchaser
3 matches the address listed in the database.

4 (B) If the seller, distributor, or nonsale distributor, is unable to
5 verify that the purchaser or recipient is 21 years of age or older
6 pursuant to subparagraph (A), he or she shall require the customer
7 or recipient to submit an age-verification kit consisting of an
8 attestation signed by the customer or recipient that he or she is 21
9 years of age or older and a copy of a valid form of government
10 identification. For the purposes of this section, a valid form of
11 government identification includes a driver's license, state
12 identification card, passport, an official naturalization or
13 immigration document, such as an alien registration receipt card
14 (commonly known as a "green card") or an immigrant visa, or
15 military identification. In the case of a sale, the distributor or seller
16 shall also verify that the billing address on the check or credit card
17 provided by the consumer matches the address listed in the form
18 of government identification.

19 (2) In the case of a sale, the distributor or seller shall impose a
20 two-carton minimum on each order of cigarettes, and shall require
21 payment for the purchase of any tobacco product to be made by
22 personal check of the purchaser or the purchaser's credit card. No
23 money order or cash payment shall be received or permitted. The
24 distributor or seller shall submit to each credit card acquiring
25 company with which it has credit card sales identification
26 information in an appropriate form and format so that the words
27 "tobacco product" may be printed in the purchaser's credit card
28 statement when a purchase of a tobacco product is made by credit
29 card payment.

30 (3) In the case of a sale, the distributor or seller shall make a
31 telephone call after 5 p.m. to the purchaser confirming the order
32 prior to shipping the tobacco products. The telephone call may be
33 a person-to-person call or a recorded message. The distributor or
34 seller is not required to speak directly with a person and may leave
35 a message on an answering machine or by voice mail.

36 (4) The nonsale distributor shall deliver the tobacco product to
37 the recipient's verified mailing address, or in the case of a sale,
38 the seller or distributor shall deliver the tobacco product to the
39 purchaser's verified billing address on the check or credit card

1 used for payment. No delivery described under this section shall
2 be permitted to any post office box.

3 (c) Notwithstanding subdivisions (a) and (b), if a seller,
4 distributor, or nonsale distributor, complies with all of the
5 requirements of this section and a person under 21 years of age
6 obtains a tobacco product by any of the means described in
7 subdivision (b), the seller, distributor, or nonsale distributor is not
8 in violation of this section.

9 (d) For the purposes of the enforcement of this section pursuant
10 to Section 22958, the acts of the United States Postal Service or
11 other common carrier when engaged in the business of transporting
12 and delivering packages for others, and the acts of a person,
13 whether compensated or not, who transports or delivers a package
14 for another person without any reason to know of the package's
15 contents, are not unlawful and are not subject to civil penalties.

16 (e) (1) (A) For the purposes of this section, a "distributor" is
17 any person or entity, within or outside the state, who agrees to
18 distribute tobacco products to a customer or recipient within the
19 state. The United States Postal Service or any other public or
20 private postal or package delivery service are not distributors within
21 the meaning of this section.

22 (B) A "nonsale distributor" is any person inside or outside of
23 this state who, directly or indirectly, knowingly provides tobacco
24 products to any person in this state as part of a nonsale transaction.
25 "Nonsale distributor" includes the person or entity who provides
26 the tobacco product for delivery and the person or entity who
27 delivers the product to the recipient as part of a nonsale transaction.

28 (C) "Nonsale distribution" means to give smokeless tobacco or
29 cigarettes to the general public at no cost, or at nominal cost, or
30 to give coupons, coupon offers, gift certificates, gift cards, or other
31 similar offers, or rebate offers for smokeless tobacco or cigarettes
32 to the general public at no cost or at nominal cost. Distribution of
33 tobacco products, coupons, coupon offers, gift certificates, gift
34 cards, or other similar offers, or rebate offers in connection with
35 the sale of another item, including tobacco products, cigarette
36 lighters, magazines, or newspapers shall not constitute nonsale
37 distribution.

38 (2) For the purpose of this section, a "seller" is any person or
39 entity, within or outside the state, who agrees to sell tobacco
40 products to a customer within the state. The United States Postal

1 Service or any other public or private postal or package delivery
2 service are not sellers within the meaning of this section.

3 (3) For the purpose of this section, a “carton” is a package or
4 container that contains 200 cigarettes.

5 (f) A district attorney, city attorney, or the Attorney General
6 may assess civil penalties against any person, firm, corporation,
7 or other entity that violates this section, according to the following
8 schedule:

9 (1) A civil penalty of not less than one thousand dollars (\$1,000)
10 and not more than two thousand dollars (\$2,000) for the first
11 violation.

12 (2) A civil penalty of not less than two thousand five hundred
13 dollars (\$2,500) and not more than three thousand five hundred
14 dollars (\$3,500) for the second violation.

15 (3) A civil penalty of not less than four thousand dollars (\$4,000)
16 and not more than five thousand dollars (\$5,000) for the third
17 violation within a five-year period.

18 (4) A civil penalty of not less than five thousand five hundred
19 dollars (\$5,500) and not more than six thousand five hundred
20 dollars (\$6,500) for the fourth violation within a five-year period.

21 (5) A civil penalty of ten thousand dollars (\$10,000) for a fifth
22 or subsequent violation within a five-year period.

23 SEC. 7. Section 22964 is added to the Business and Professions
24 Code, to read:

25 22964. This division sets forth minimum state restrictions with
26 respect to the legal age to purchase or possess tobacco products
27 and does not preempt or otherwise prohibit the adoption of a local
28 standard that imposes a more restrictive legal age to purchase or
29 possess tobacco products. A local standard that imposes a more
30 restrictive legal age to purchase or possess tobacco products shall
31 control in the event of any inconsistency between this division and
32 a local standard.

33 SEC. 8. Section 308 of the Penal Code is amended to read:

34 308. (a) (1) (A) Every person, firm, or corporation that
35 knowingly or under circumstances in which it has knowledge, or
36 should otherwise have grounds for knowledge, sells, gives, or in
37 any way furnishes to another person who is under 21 years of age
38 any tobacco, cigarette, or cigarette papers, or blunt wraps, or any
39 other preparation of tobacco, or any other instrument or
40 paraphernalia that is designed for the smoking or ingestion of

1 tobacco, products prepared from tobacco, or any controlled
2 substance, is subject to either a criminal action for a misdemeanor
3 or to a civil action brought by a city attorney, a county counsel, or
4 a district attorney, punishable by a fine of two hundred dollars
5 (\$200) for the first offense, five hundred dollars (\$500) for the
6 second offense, and one thousand dollars (\$1,000) for the third
7 offense.

8 **Notwithstanding**

9 (B) *Notwithstanding* Section 1464 or any other law, 25 percent
10 of each civil and criminal penalty collected pursuant to this
11 subdivision shall be paid to the office of the city attorney, county
12 counsel, or district attorney, whoever is responsible for bringing
13 the successful action, and 25 percent of each civil and criminal
14 penalty collected pursuant to this subdivision shall be paid to the
15 city or county for the administration and cost of the community
16 service work component provided in subdivision (b): *action*.

17 **Proof**

18 (C) *Proof* that a defendant, or his or her employee or agent,
19 demanded, was shown, and reasonably relied upon evidence of
20 majority shall be defense to any action brought pursuant to this
21 subdivision. Evidence of majority of a person is a facsimile of or
22 a reasonable likeness of a document issued by a federal, state,
23 county, or municipal government, or subdivision or agency thereof,
24 including, but not limited to, a motor vehicle operator's license, a
25 registration certificate issued under the federal Selective Service
26 Act, or an identification card issued to a member of the Armed
27 Forces.

28 **For**

29 (D) *For* purposes of this section, the person liable for selling
30 or furnishing tobacco products to persons under 21 years of age
31 by a tobacco vending machine shall be the person authorizing the
32 installation or placement of the tobacco vending machine upon
33 premises he or she manages or otherwise controls and under
34 circumstances in which he or she has knowledge, or should
35 otherwise have grounds for knowledge, that the tobacco vending
36 machine will be utilized by persons under 21 years of age.

37 (2) For purposes of this section, "blunt wraps" means cigar
38 papers or cigar wrappers of all types that are designed for smoking
39 or ingestion of tobacco products and contain less than 50 percent
40 tobacco.

1 ~~(b) Every person under 21 years of age who purchases, receives,~~
2 ~~or possesses any tobacco, cigarette, or cigarette papers, or any~~
3 ~~other preparation of tobacco, or any other instrument or~~
4 ~~paraphernalia that is designed for the smoking of tobacco, products~~
5 ~~prepared from tobacco, or any controlled substance shall, upon~~
6 ~~conviction, be punished by a fine of seventy-five dollars (\$75) or~~
7 ~~30 hours of community service work.~~

8 (e)

9 (b) Every person, firm, or corporation that sells, or deals in
10 tobacco or any preparation thereof, shall post conspicuously and
11 keep so posted in his, her, or their place of business at each point
12 of purchase the notice required pursuant to subdivision (b) of
13 Section 22952 of the Business and Professions Code, and any
14 person failing to do so shall, upon conviction, be punished by a
15 fine of fifty dollars (\$50) for the first offense, one hundred dollars
16 (\$100) for the second offense, two hundred fifty dollars (\$250) for
17 the third offense, and five hundred dollars (\$500) for the fourth
18 offense and each subsequent violation of this provision, or by
19 imprisonment in a county jail not exceeding 30 days.

20 (d)

21 (c) For purposes of determining the liability of persons, firms,
22 or corporations controlling franchises or business operations in
23 multiple locations for the second and subsequent violations of this
24 section, each individual franchise or business location shall be
25 deemed a separate entity.

26 ~~(e) Notwithstanding subdivision (b), any person under 21 years~~
27 ~~of age who purchases, receives, or possesses any tobacco, cigarette,~~
28 ~~or cigarette papers, or any other preparation of tobacco, any other~~
29 ~~instrument or paraphernalia that is designed for the smoking of~~
30 ~~tobacco, or products prepared from tobacco is immune from~~
31 ~~prosecution for that purchase, receipt, or possession while~~
32 ~~participating in either of the following:~~

33 ~~(1) An enforcement activity that complies with the guidelines~~
34 ~~adopted pursuant to subdivisions (c) and (d) of Section 22952 of~~
35 ~~the Business and Professions Code.~~

36 ~~(2) An activity conducted by the State Department of Public~~
37 ~~Health, a local health department, or a law enforcement agency~~
38 ~~for the purpose of determining or evaluating youth tobacco~~
39 ~~purchase rates.~~

40 (f)

1 (d) It is the Legislature's intent to regulate the subject matter
2 of this section. As a result, a city, county, or city and county shall
3 not adopt any ordinance or regulation inconsistent with this section.

4 SEC. 9. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

O